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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re K.L., et al., Persons Coming Under
the Juvenile Court Law.

B213337

(Los Angeles County
Super. Ct. No. CK75118)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

H.L.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. D. Zeke Zeidler, Judge. Affirmed.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Los Angeles County Counsel, James M. Owens, Assistant County Counsel and Navid Nakhjavani, Senior Associate County Counsel, for Plaintiff and Respondent.

H.L. (father) appeals from the juvenile court's jurisdictional and dispositional orders establishing dependency jurisdiction over his three children, K.L. (born October 1994), H.L., Jr. (born November 1995), and N.L. (born June 2002) and ordering monitored visitation between father and the children. We affirm the juvenile court's jurisdictional and dispositional orders.

BACKGROUND

1. Detention and Section 300 Petition

On October 9, 2008, the Department of Children and Family Services (the Department) received a referral alleging that father had sexually abused his 17-year-old stepdaughter, C.L., and emotionally abused K.L., H.L., and N.L. According to the referral, C.L. disclosed that father had sexually abused her when she was 12 or 13 years old by kissing her on the mouth, showering with her, and having her pull down her underwear.¹ C.L. said the abuse stopped when she was 13, that mother was aware of the abuse by father but did nothing to protect her and told her not to tell anyone about it. C.L. further stated that mother had obtained a restraining order against father two months ago because father hit mother. C.L. said she had witnessed other incidents of domestic violence between mother and father but did not provide any details regarding these incidents.

A Department social worker responded to the referral and interviewed mother and C.L.'s half-siblings. Mother told the social worker that father had been in C.L.'s life since the child was five years old. Mother was unaware of any sexual abuse by father, and had not witnessed any inappropriate behavior between father and C.L. Mother denied that C.L. had ever told her about the abuse and denied admonishing C.L. to be silent about the abuse. Mother said she did not know whether C.L.'s disclosures concerning father's sexual abuse were truthful, but she acknowledged that it was a

¹ C.L. also claimed to have been sexually abused by her biological father and her maternal grandfather.

possibility because father was often at home alone with the children while mother was at work.

Mother said that father no longer lived in the home because of a restraining order she obtained against him after the police responded to a physical altercation between father and mother on August 3, 2008. According to mother, father was intoxicated and pushed mother into the wall during an argument. She said the children were not present during the incident but found out about it afterward.

Thirteen-year-old K.L. confirmed that father no longer lived in the home. K.L. said she was at her grandmother's home when the police responded to the domestic violence incident between her parents on August 3, 2008, and mother told her what had happened afterward. K.L. admitted that mother and father fight a lot in the home. She said that father had never touched her inappropriately and that she had never seen him do so to any of the other children.

Twelve-year-old H.L. said that father had not lived in the home for two months, but that he had last seen father approximately a month ago. Father came to the home when mother was at work and left before she returned home. H.L. was not present when the police responded to the home on August 3, 2008, because he was visiting his grandmother with the other siblings. He denied witnessing any domestic violence in the home but said that mother and father yell at each other sometimes. H.L. denied seeing or hearing of any inappropriate conduct between father and any of the children in the home. He said that mother and C.L. often argue.

Six-year-old N.L. said that father no longer lives in the home and that he is sad because he misses father. He denied witnessing any physical altercations between the parents but said that mother and father used to yell sometimes. He denied ever seeing father kiss any of his siblings or shower with them.

The Department's social worker interviewed 17-year-old C.L. on October 10, 2008, in the presence of two sheriff's deputies. C.L. said the inappropriate contact with father started with father confiding in her about his problems with mother. Father would enter C.L.'s room while mother was at work, sit next to C.L. on her bed and kiss her on

the mouth. On a few occasions, father and C.L. discussed a mole the child had on her “private area” and father asked to see it. Father examined the mole with his finger “as if he was a doctor.” Father also asked C.L. if he could shower with her. She said “yes,” and he would stand in the shower with her, naked, and would look at her but not touch her. C.L. said she was uncomfortable with the situation but did not know how to stop it. She did not tell anyone about the abuse except her boyfriend. C.L. said she was not at home when the police responded to the August 3, 2008 domestic violence incident between mother and father. She said although father no longer lived in the home and was not supposed to be there, “he is always there.”

On October 14, 2008, the social worker interviewed father, who was unemployed and homeless at the time. Father admitted that he was arrested for domestic violence on August 3, 2008, but denied hitting mother. When the social worker showed father a police report documenting father’s statement to the arresting officer that “he slapped mother only one time,” father denied making that statement. Father said he pleaded guilty to the charge so he could get out of jail. Father denied all allegations concerning sexual abuse of C.L. He maintained that C.L. was being influenced by her 20-year-old boyfriend, was mad at father, and wanted father “out of the picture.”

On October 17, 2008, the social worker spoke with the children’s maternal grandmother who said that she believed father was a good father and that she had never seen any inappropriate behavior by him toward any of the children.

A team decision meeting was held on October 21, 2008, during which C.L. told mother about the sexual abuse. C.L. said she had not previously disclosed the abuse because she was afraid to let anyone know. At the conclusion of the meeting, the Department determined that the children could remain in mother’s home but decided to file a petition on their behalf.

The Department filed a petition under Welfare and Institutions Code section 300,² subdivisions (a), (b), (d), (g), and (j), alleging, among other things, a substantial risk of

² All further statutory references are to the Welfare and Institutions Code.

harm to the children as the result of domestic violence between mother and father and as the result of father's sexual abuse of C.L.³ The Department also provided the juvenile court with a copy of the police report concerning the August 3, 2008 incident of domestic violence between mother and father. The report included mother's statement that father had slapped her face, causing a small cut on the inside of her upper lip. The responding officer observed that the left side of mother's mouth was red, her upper lip was swollen, and the inside of her upper lip had a small cut. Mother told the responding officers that there was a history of domestic violence with father but she had not reported past incidents. Father admitted to the responding officers that he slapped mother during an argument. After his arrest, father modified his description of the incident and said that he slapped mother after she had slapped him. The arresting officer reported smelling alcohol on father's breath and person.

At the October 24, 2008 detention hearing, the juvenile court found a prima facie case for detaining all of the children and ordered the children detained from father and released to mother's custody.

2. Jurisdiction and Disposition

In its jurisdiction/disposition report, the Department noted that the family had two prior referrals in 2007, for physical abuse by father and general neglect by mother. Both referrals were deemed unfounded.

In a November 20, 2008 interview, C.L. said that mother and father frequently argue and yell at each other, usually over finances. She was not present during father's arrest for domestic violence but said she was not surprised by the arrest because of father's aggressive behavior. She further stated her belief that father is an alcoholic because he drinks a six-pack of beer on a daily basis and afterward behaves in a manner indicating he is drunk. C.L. said she could not recall specific times and dates of incidents

³ The petition also included allegations of sexual abuse by C.L.'s biological father and maternal grandfather that are not relevant to this appeal, and allegations of failure to protect by mother that were subsequently stricken.

of sexual abuse by father but said that the abuse began when she was in the 8th grade and lasted for approximately one year. She said that father treated her as a peer rather than as a child and recalled him kissing her on the mouth a few times. She reported that father would shower with her on occasion, but that when he did so she would stand in the corner with her back to him and not look at him. She also stated that father examined a mole located on her vagina, touching her with his finger without penetrating her. C.L. denied being upset with father for recently disciplining her by taking away the computer and the car. She said that she frequently argues with father over the car and the computer and reported that father does “mean” things such as turning off the computer while she worked on school assignments.

K.L. said she did not believe C.L.’s allegations of sexual abuse by father because C.L. frequently lies and gets into conflicts with him. She did not recall any incidents when father and C.L. were left alone together, nor did she notice any odd behavior by C.L. She reported overhearing C.L. say she was going to “get” father in retaliation for father’s recently disciplining C.L. by taking away the car keys and computer. K.L. denied being the subject of any sexual abuse by father. K.L. acknowledged that mother and father frequently argue over finances but said she never observed father hit mother. She said that father “used to drink” on the weekends.

H.L. expressed shock when told of C.L.’s allegations of sexual abuse by father. He did not witness any incidents of abuse and could not recall occasions when C.L. and father would have been alone together. He denied any sexual abuse by father. H.L. said that father and mother frequently argue over finances but did not witness any physical altercations between them. H.L. acknowledged that father drinks beer, but said that it occurs only sporadically and that father does not get drunk.

N.L. said that no one had ever touched him in a sexual manner and he never observed father kissing C.L. or entering the bathroom while C.L. was showering. He said that his parents yelled at each a lot but did not know why. He did not witness any physical altercations between mother and father.

Mother admitted that she and father had a history of verbal altercations, primarily about finances. On the day of father's domestic violence arrest, father had been drinking and confronted mother about her whereabouts when she returned home. They argued and father pushed her towards a wall. She denied that father slapped her, but said that he grabbed her face and squeezed her cheeks. She denied that father caused any lacerations to her face or lip. She said father drank beer on weekends but did not become drunk or drive under the influence of alcohol.

Father denied all allegations of sexual abuse. He stated that C.L. is upset with him and that the allegations of abuse are her way of getting back at him. He said he is the disciplinarian in the family and that, C.L. rebels against his disciplinary measures. Approximately one week before the Department's intervention, C.L. became upset with father because he disciplined her by taking away the computer and car keys. Thereafter, his daughter K.L. attempted to warn him that she had overheard C.L. threaten to "get him" and that she had a plan for him. Father had dismissed the warning.

On December 8, 2008, the parties participated in mediation and reached an agreement regarding the language and certain allegations in the petition. The parties dismissed allegations under section 300, subdivision (a), and deleted all allegations concerning mother's failure to protect the children. The parties amended the allegation concerning domestic violence to read as follows:

"On or about 8/3/08, the children [C.L., K.L., H.L., and N.L.]'s mother, . . . and the mother's male companion [father], father of the children [K.L., H.L. and N.L.] engaged in a verbal confrontation which became physical resulting in . . . father striking pushing the children's mother. The confrontation escalated to a degree that police intervention was necessary. Such domestic violence places the children at risk of harm."

The juvenile court found that a partial settlement had been reached and set the matter for a contested adjudication and disposition hearing.

A. Adjudication Hearing

C.L. testified at the December 11, 2008 adjudication hearing. She said that father came to live with her when she was very young and that her relationship with him at first was like a father and daughter. Things changed when C.L. was age 12 or 13, and father began asking C.L. for her advice in dealing with mother and with his own personal problems. She said father kissed her on the lips “more than a few” times, asked to shower with her and showered with her sometimes, and examined a mole on her “private area” on more than one occasion. She said the abuse stopped when she was a freshman in high school. C.L. also recounted the problems she had experienced with father’s attempts to discipline her. According to C.L., father punished her for no reason by destroying personal belongings that had sentimental value to her. She described one incident in which father took her teddy bear, blanket and pillow and threw those items outside, so that they were destroyed. C.L. asked father why he had done that, but he would not tell her.

At the close of C.L.’s testimony, father’s counsel made a motion under section 350 to dismiss the sexual abuse allegations. After hearing argument from the parties, the juvenile court granted father’s motion in part. The court noted that the allegation concerning domestic violence under section 300, subdivision (a), had already been dismissed in mediation, as had allegations concerning father’s abuse of alcohol under section 300, subdivision (b). The juvenile court dismissed all allegations of sibling abuse under section 300, subdivision (j) and amended counts b-1 and d-1 of the petition to conform to proof as follows:

“Count B-1 and D-1 I’m amending to conform to proof to read on numerous prior occasions, the children, [C.L., K.L., H.L.] -- let me change that, the child [C.L.’s] mother’s male companion [father], . . . sexually abused the child [C.L.] for one year when the child was approximately 13 years old by kissing the child with an open mouth on a number of occasions. Such incident combined with the . . . father[’s] violation of appropriate boundaries by repeatedly showering with the child and touching her on the vaginal area. Once again that was such incident combined with the . . . [father’s] violation of inappropriate boundaries by repeatedly showering with the child and touching on the vaginal area,

endangers the child's physical and emotional health and safety and places the child at risk of physical harm, damage and sexual abuse.”

The court then found C.L. to be a person described by section 300, subdivisions (b), (d), and (g),⁴ and K.L., H.L., and N.L. to be persons described by section 300, subdivision (b).

B. Dispositional Hearing

At the December 17, 2008 dispositional hearing, the juvenile court indicated that it would be considering, for dispositional purposes, the same evidence and testimony that it considered for adjudication. After hearing argument from the parties, the court found that substantial danger existed to the children's physical and/or mental health, and declared all four children to be dependents of the juvenile court. The court ordered the children removed from father's custody and placed with mother under the Department's supervision. The court ordered family reunification services for father and ordered father to complete a parent education program, a domestic violence program, individual counseling to address the sustained counts, and to comply with criminal court orders regarding the domestic violence incident. The court ordered father to have no contact with C.L. and monitored visits at least twice a week with N.L., and weekly with K.L. and H.L. The juvenile court gave the Department discretion to liberalize father's visits with his own children.

Father appeals from all of the juvenile court's jurisdictional and dispositional findings and orders.

DISCUSSION

I. Standard of Review

We review the juvenile's court's jurisdictional and dispositional findings under the substantial evidence standard. (*In re David M.* (2005) 134 Cal.App.4th 822, 829 (*David M.*); *Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078.) Under this standard, we review the record to determine whether there is any reasonable, credible,

⁴ Count g-1 of the petition alleges failure to provide by C.L.'s biological father.

and solid evidence to support the juvenile court's conclusions, resolve all conflicts in the evidence, and make all reasonable inferences from the evidence in support of the court's orders. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

II. Jurisdictional Findings

Section 300, subdivision (b) accords the juvenile court jurisdiction over a child if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child” “The statutory definition consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) “serious physical harm or illness” to the minor, or a “substantial risk” of such harm or illness.’ [Citation.]” (*David M., supra*, 134 Cal.App.4th at p. 829.) Father contends the requirements for a finding of jurisdiction under section 300, subdivision (b) were not met because there was no neglectful conduct by either parent and no substantial risk of harm to the children.

“[D]omestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.)

Here, there was evidence of domestic violence between mother and father that necessitated police intervention. Father does not dispute that the August 3, 2008 incident that resulted in his arrest and the issuance of a restraining order against him constitutes domestic violence. He maintains, however, that the August 3, 2008 incident did not place the children at substantial risk of harm because it was a single, isolated incident, and the children were not present in the house at the time. The fortuity of the children's absence during that incident of domestic violence does not negate the risk to the children. All of the children confirmed that mother and father frequently argued and yelled at one another in the children's presence. Mother told the police officers who responded to the August 3, 2008 incident that there was a history of domestic violence, but that she had never reported past incidents. C.L. said she witnessed incidents of domestic violence between

father and mother. Although father admitted hitting mother at the time he was arrested, he subsequently disclaimed responsibility by blaming mother for hitting him first and then denied striking her altogether. Father's failure to take responsibility for his actions placed the children at substantial risk of future harm. Substantial evidence supports the juvenile court's jurisdictional finding that domestic violence between mother and father presented a substantial risk of harm to the children.

The parties disagree as to whether the juvenile court's findings with regard to father's sexual abuse of C.L. under section 300, subdivision (d) can also serve as a basis for asserting jurisdiction over K.L., H.L. and N.L. Because substantial evidence supports the juvenile court's jurisdictional findings under section 300, subdivision (b), we need not address this issue. (*In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875 [an appellate court can affirm a juvenile court's jurisdictional findings if the evidence supports any one of the statutory bases for jurisdiction].)

III. Dispositional Orders

Father challenges the juvenile court's dispositional order for monitored visitation, arguing that his request for unmonitored visits should have been honored. An order setting visitation terms is reviewed for abuse of discretion. (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1704.) An abuse of discretion does not occur unless the juvenile court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 806.) A visitation order may not jeopardize the safety of the child. (§ 362.1, subd. (a)(1)(B).)

The evidence showed that father had a history of domestic violence with mother, including a physical altercation that caused injury to mother's mouth and resulted in father's arrest and the issuance of a restraining order against him, and that father admitted hitting mother at the time of his arrest. Subsequently he blamed mother for initiating the fight by hitting him first and then he denied slapping her at all. This record shows that the juvenile court balanced the interests of both father and the children and discloses no abuse of discretion by the juvenile court in ordering monitored visitation for father and according the Department discretion to liberalize the visits.

DISPOSITION

The orders establishing juvenile court jurisdiction over K.L., H.L., and N.L., removing them from father's custody and ordering father monitored visitation are affirmed.

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_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD